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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,773	08/21/2001	Robert E. Reiter	02307K-141584	9474

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EXAMINER

HELMS, LARRY RONALD

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 12/31/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/934,773

Applicant(s)

REITER ET AL.

Examiner

Larry R. Helms

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 53,56-62 and 87-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 53,56-62 and 87-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 53, 87, 97 have been amended
2. Claims 53, 56-62, 87-99 are under examination.
3. The text of those sections of Title 35 U.S.C. code not included in this office action can be found in a prior Office Action.

Rejections Withdrawn

4. The rejection of Claims 53, 56-62, 87-88 and newly added claims 89-99 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 69-86 of copending Application No. 09/359,326 is withdrawn in view of the abandonment of the application 09/359,326.
5. The rejection of claims 53, 56-62, 87-99 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in view of amendments to the claims.
6. The rejection of claims 53, 56-62, 87, 89, 91, 95, 98 under 35 U.S.C. 102(a) as being anticipated by Reiter et al (WO 98/40403, published 9/1998) and as evidenced from the specification is withdrawn in view of the declaration of Reiter and Witte.

7. The rejection of claims 53, 56-62, 87, 88, 89, 91, 95, 98 under 35 U.S.C. 103(a) as being anticipated by Reiter et al (WO 98/40403, published 9/1998) and as evidenced from the specification is withdrawn in view of the declaration of Reiter and Witte.

Response to Arguments

8. The rejection of claims 53, 56-62, 87-88 and newly submitted claims 89-99 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,258,939 and further in view of Vitetta et al (Biologic therapy of Cancer, J.B. Lippincott Company, pages 482-495, 1991) and Queen et al (U.S. Patent 5,693,762, filed 6/95) is maintained.

The response filed 9/22/03 has been carefully considered but is deemed not to be persuasive. The response states that applicants will submit a terminal disclaimer as appropriate (see page 11 of response). In response to this argument, no terminal disclaimer has been filed and as such the rejection is maintained.

9. The rejection of claim 99 under 35 U.S.C. 102(b) as being anticipated by Au-Young (U.S. Patent 5,856,136, filed 7/96) is maintained.

The response filed 9/22/03 has been carefully considered but is deemed not to be persuasive. The response states that Au-Young teaches away from the claimed fragment consisting of amino acids positions 85-123 because in Figure 5 amino acids

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91-123 are hydrophobic and a skilled artisan would not make antibodies to hydrophobic regions (see page 13-14 of response. In response to this argument, Au-Young teach using the C-terminal or in hydrophilic regions in Figure 5. Thus Au-Young clearly teach making antibodies to the C-terminus which is included in residues 85-123 of SEQ ID NO:2. In addition, residues ca 90-100 are hydrophilic and would be used for antibodies (see Figure 5).

Thus, it would be inherent that antibodies to the C-terminus would be antibodies that bind to a portion of residues 85-123 of SEQ ID NO:2.

Conclusion

10. No claim is allowed.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry R. Helms, Ph.D, whose telephone number is (703) 306-5879. The examiner can normally be reached on Monday through Friday from 7:00 am to 4:30 pm, with alternate Fridays off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached on (703) 308-3995. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

13. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 308-4242.

Respectfully,

Larry R. Helms Ph.D.

703-306-5879



LARRY R. HELMS, PH.D
PRIMARY EXAMINER